



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Olin Culberson, Director
Gas Utilities Division
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. 0-1219

Re: Operation of House Bill No. 792 regu-
lating the liquefied petroleum gas in-
dustry.

We have received your letter of August 31,
1939, requesting an opinion of this department upon six
different questions propounded in your letter.

The first of your questions reads as follows:

"(1). Will a corporation that is engaged
in the assembly of apparatus used for the stor-
age and dispensing of liquefied petroleum gas
and which has one main office in a given city
and three or four branch offices in other cit-
ies, but which branch offices operate under the
same corporate name as the main office - will
one license fee cover all operations of the
company or will it be necessary for each branch
office to file a bond and pay the license fee."

Section 2(b) of this Act reads, in part, as fol-
lows:

"No person, firm or corporation shall, after
the effective date of this Act, engage in this
State in the manufacture and/or assembly, sale
or installation of any apparatus to be used in
this State for the storage and/or dispensing of
liquefied petroleum gas or to be used for any
of the purposes enumerated in Section 2a hereof,
or engage in the handling and/or transportation

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of liquefied petroleum gas over the highways of this State for use in any such apparatus, without having first obtained from the Railroad Commission of Texas, under the provision of this Act a license so to do. * * *

We have read and considered the entire H.B. 792 and in our opinion the term person as used in Section (b) and other sections of said Act is used to denote a dealer which may be a person, firm or corporation and is used in the sense of a person owning and operating his own particular business which is regulated under the terms and scope of this Act. From our consideration of the entire Act, we do not believe that it was the intention of the Legislature to require every person that might be employed by a firm or a corporation to have a license and to post a bond before participating in the sale of assembling, manufacturing, installing or transporting any of the apparatus or equipment provided for in this Act.

But on the contrary we believe it to have been the intention of the Legislature that the person, firm or corporation operating the business and responsible for the operation management of the business to be the only one required to post a bond and secure the license. The use of the term "person" being in the sense applied in Vol. 7 Words and Phrases, First Series, as the one who could claim the use, benefit or advantage of the property. We like also to apply the restriction of the "right to control the property or business". In the event loss was sustained or a cause of action arose as a result of the defective apparatus sold, the liability would fall upon the person, firm or corporation operating said business. Therefore, you are advised that in our opinion the answer to your first question is "No".

Question No. 2 - "Such a corporation as mentioned in Question No. 1 furnishes these systems and appliances to other people who operate in their own individual capacity as merchants or salesmen. Commissions are paid to such merchants or salesmen by the corporation filling such orders. Is it necessary that each

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individual who operates under his own name to file a bond and pay the license fee?"

We answer your Question No. 2 in the affirmative. Your question states that other people operate in their own individual capacity, that being true they have their own business or represent themselves to be in business and are not taking orders from the manufacturer or from some corporation firm or individual. We construe H.B. 792 to intend that all persons engaging in any phases of the industry mentioned herein upon their own responsibility to fall within its requirements. These individuals are acting as merchants selling liquid gas.

Question No. 3. "The Automatic Butane Gas Company, home office Houston, Texas, also operates the 'Brazoria County Gas Company' and the 'Liberty County Gas Company.' Can the Automatic Butane Gas Company file one bond and pay one license fee to cover the activities of the three differently named activities, but all of which are under one common ownership?"

We have additional information that none of three named companies are incorporated, but are all owned entirely by one individual and operated under assumed names. The Brazoria County and Liberty County Gas Companies being operated as branches, receiving their stock and equipment from the Automatic Butane Gas Company, Houston. There is, therefore, one owner responsible for all debts, claims or law suits of or against all three concerns. Under our theory of the intention of legislature there is no necessity for a bond and license of each company, but one bond and one license will suffice.

Question No. 4. "Section 2 of House Bill 792 reads as follows, in part: 'Containers subject to the regulation of the Interstate Commerce Commission and containers which are owned or used by the Government of the United States

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of America are excepted from the provisions of this section.

"We have many people who use what is known as 'I.C.C.' Containers in the handling of what is called 'Bottled' gas business, but such containers are never shipped in anything except in intrastate business. Further Section 2 provides for the manner of construction of butane gas containers and not to engaging in the 'business'.

"We have held that a person sells and distributes butane gas using I.C.C. Containers is subject to file the bond and pay the license fee. Are we correct in this requirement?"

Your question and information pertaining thereto advises us that you have held a person who sells and distributes Butane Gas using I.C.C. Containers is subject to file a bond and pay the license fee. We think you have correctly answered that question and that the statute clearly requires that that be done.

Section 2(a) provides that containers subject to the regulation of the Interstate Commerce Commission and containers which are owned and used by the Government of the United States of America are excepted from the provisions of this section. Since your letter states that the containers mentioned in Question No. 4 are used only in intrastate business the statute makes no exception for those containers they are clearly within the requirements of the statute.

Question No. 5. "A distributor of butane equipment has his products handled by individuals and firms in different towns. These individuals and firms solicit the sale of this butane equipment and receive therefor a commission from the distributor. The distributor operates under one name and the above mentioned representatives operate businesses under their own respective names."

Question No. 5 appears to us to have the same set of facts as Question No. 2, heretofore answered.

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Our answer to Question No. 5 is "Yes". They are operating in their individual capacity though they receive a commission from the distributor for their sales. We believe the Statute requires them to be licensed and bonded. We think that you have correctly held that these persons are engaged in the sale of apparatus to be used in Texas for storage and dispensing of liquefied petroleum gas as set out in Section 2 (b) of the Act.

Question No. 6. "A wholesale hardware man purchases I.C.C. Containers, which he subsequently sells to retail hardware men, who in turn sell them to users.

"Is the wholesaler to be regarded as coming under Section 2(b) under the word 'sell' as used therein? Is he engaged in the business of selling apparatus for the dispensing of butane?"

Section 2 (b) quoted in the first part of this opinion, uses the word "sell". We believe that applies to all manufacturers, assemblers, sellers and transporters, limiting the application according to terms of person, firm or corporation engaged in that business and not applying it to all employees of the firm, person or corporation. We believe the law has the same application to the wholesaler as to the retailer. Therefore, you are advised that the person inquired about in your Question No. 6 must comply with the law and secure a license and post a bond as required by H.B. 792.

We trust these answers to your inquiries will be of assistance to you in the administration of this Act.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Morris Hodges*
Morris Hodges
Assistant

ME:or

APPROVED AUG 19, 1939

George B. Mann
ATTORNEY GENERAL OF TEXAS

